

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

FIRST AMERICAN TITLE  
INSURANCE COMPANY,

vs.

Plaintiff,

JOHN KENNEALLY; BOSA  
CALIFORNIA LLC; BOSA  
DEVELOPMENT CALIFORNIA INC.;  
THE WESTON FIRM, P.C.; BECK &  
LEE, P.A.,

Defendants.

CASE NO. 11CV264 WQH JMA

**ORDER**

HAYES, Judge:

The matters before the Court are the Motion to Dismiss Plaintiff's Complaint for Statutory Interpleader (ECF No. 15) filed by Defendant Beck & Lee, P.A. and the Motion for Order of Discharge and Injunction (ECF No. 22) filed by Plaintiff First American Title Insurance Company.

**BACKGROUND**

On February 8, 2011, Plaintiff First American Title Co. ("First American") filed the Complaint for Statutory Interpleader. (ECF No. 1). On February 15, 2011, Plaintiff First American deposited into the Court's registry \$65,000.00. (ECF No. 6).

On March 10, 2011, Defendants BOSA California LLC and BOSA Development

1 California Inc. filed an Answer. (ECF No. 14). On March 16, 2011, Defendant Beck & Lee,  
2 P.A. filed a Motion to Dismiss. (ECF no. 15). On March 21, 2011, Defendant the Weston  
3 Firm, P.C. and Defendant John Kenneally filed Answers. (ECF Nos. 20-21). On that same  
4 day, Plaintiff First American filed a Motion for Order of Discharge and Injunction pursuant  
5 to 28 U.S.C. §§ 1335, 2361. (ECF No. 22).

On April 4, 2011, Plaintiff First American filed an Opposition to Defendant Beck's Motion to Dismiss. (ECF No. 24). On that same day Beck filed an Opposition to Plaintiff's Motion for Order of Discharge and Injunction. (ECF No. 25). On April 11, 2011, Plaintiff First American filed a Reply. (ECF No. 26).

## **ALLEGATIONS OF THE COMPLAINT**

11 Plaintiff First American is a California corporation. Defendant Bosa California LLC  
12 is a California limited liability company. Defendant Bosa Development California, Inc. is a  
13 California corporation. Defendant John Kenneally (“Kenneally”) is a citizen of California.  
14 Defendant The Weston Firm, P.C. (“Weston”) is a California corporation. Defendant Beck  
15 & Lee P.A. (“Beck & Lee”) is a Florida corporation.

16 Plaintiff alleges that in November 2006, John Kenneally, signed a purchase contract  
17 with Bosa LLC for a condominium unit in the Bayside condominium project developed by  
18 Bosa in San Diego. Kenneally paid approximately \$200,000 into an escrow account with First  
19 American, the escrow agent, as a deposit on the purchase price. A dispute arose between  
20 Kenneally and Bosa over representations regarding the size of the condominium unit and  
21 Kenneally filed a federal action: *Kenneally et al. v. Bank of Nova Scotia, et al.*, Case No. 09-  
22 cv-02039-WQH JMA, Southern District of California. Kenneally sought rescission of the  
23 purchase contract.

24 First American was named as a defendant in the federal action. “Kenneally did not  
25 assert any alleged misrepresentations or other alleged misconduct as to First American; rather,  
26 Kenneally named First American as a defendant in the federal action solely because First  
27 American held Kenneally’s escrowed deposit.” (ECF No. 1 at 3). “First American filed a  
28 motion to dismiss and, on or about April 28, 2010, obtained an order dismissing First

1 American from the federal action.” *Id.*

2 Kenneally was represented by Weston when he filed the Complaint. On January 4,  
 3 2010, Weston and Beck & Lee filed papers reflecting that Beck & Lee were appearing as  
 4 counsel for Kenneally.

5 Kenneally and Bosa reached a settlement of the federal action that called for the escrow  
 6 deposit to be disbursed. A fee dispute developed between Beck & Lee and the Weston Firm  
 7 and Kenneally. On September 21, 2010, Beck & Lee provided First American with a  
 8 “Charging Lien” against \$65,000.00 of the escrow deposit.

9 On October 20, 2010, Beck & Lee filed a separate lawsuit in Florida state court entitled:  
 10 *Beck & Lee, P.A. v. John Kenneally, et al.*, Case No. 10- 56264CA25 (Eleventh Judicial  
 11 Circuit, Miami-Dade County). Beck & Lee asserts three claims: (1) breach of contract against  
 12 the Weston Firm and Kenneally; (2) quantum meruit against the Weston Firm and Kenneally;  
 13 and (3) adjudication and imposition of Attorney’s charging lien against the Weston Firm,  
 14 Kenneally, First American, BOSA California LLC, and BOSA Development California Inc.  
 15 (ECF No. 1-1 at 63-67). “Beck & Lee named First American as a defendant in the Florida  
 16 Action solely based on the allegation ... that First American ‘is in possession or control of  
 17 funds to be paid or which have been to Kenneally pursuant to a settlement agreement’ in the  
 18 federal action.” (ECF No. 1 at 4).

## 19 CONTENTIONS OF THE PARTIES

20 Plaintiff First American seeks an order “(a) dismissing First American with prejudice  
 21 and discharging it from any further liability with respect to the Interpleaded Funds; and (b)  
 22 permanently enjoining all remaining parties from initiating or prosecuting any other action in  
 23 federal or state court against First American with respect to the Interpleaded Funds (including,  
 24 without limitation, the pending Florida state court action styled *Beck & Lee, P.A. v. John*  
 25 *Kenneally, et al.*, Case No. 10-56264CA25 (Eleventh Judicial Circuit, Miami-Dade County  
 26 (the “Florida Action”)).” (ECF No. 22-1 at 2). Plaintiff First American contends that as  
 27 escrow agent, it was “unwittingly placed in the middle of a dispute between the buyer and  
 28 seller of the condominium, and then unwittingly placed in the middle of a dispute between and

1 among the buyer and his attorneys.” *Id.*

2 Defendant Beck & Lee seeks dismissal of the Complaint in Interpleader on the grounds  
 3 that “[t]he interpleader device is inappropriate here because there is already a pending  
 4 lawsuit that will effectively and efficiently resolve the claims to the disputed fees.” (ECF No.  
 5 15-1 at 3). Alternatively, Defendant Beck & Lee seeks a stay of this case pending resolution  
 6 of the Florida action and transfer of the funds to the Florida court. “Finally, Beck & Lee states  
 7 that in the event this Court sees fit to grant First American’s motion, any injunction entered  
 8 by the Court should be no broader than one enjoining the prosecution of claims against First  
 9 American.” (ECF No. 25 at 2).

## DISCUSSION

11 Pursuant to 28 U.S.C. § 1335,

12 [t]he district courts shall have original jurisdiction of any civil action of  
 13 interpleader or in the nature of interpleader filed by any person, firm, or  
 14 corporation, association, or society having in his or its custody or possession  
 15 money or property of the value of \$500 or more ... if

16 (1) Two or more adverse claimants, of diverse citizenship . . . are claiming or  
 17 may claim . . . to be entitled to such money or property ... and if

18 (2) the plaintiff has deposited such money or property ... to the clerk of the court  
 19 in such amount and with such surety as the court or judge may deem proper,  
 20 conditioned upon the compliance by the plaintiff with the future order or  
 21 judgment of the court with respect to the subject matter of the controversy.

22 Once it is determined that an interpleader action is appropriate, the court is entitled to  
 23 discharge a plaintiff-stakeholder who has no interest in the disputed funds. *See Mendez v.*  
*Teachers Ins. & Annuity Ass’n and College Retirement Equities Fund*, 982 F.2d 783, 787 (2d  
 24 Cir. 1992) (accord *Valley Forge Life Insurance Company v. Dena Hulse*, 2007 U.S. Dist.  
 25 LEXIS 52061 (N.D. Cal., July 6, 2007)). When a district court has jurisdiction over an action  
 26 pursuant to § 1335, the court “shall hear and determine the case, and may discharge the  
 27 plaintiff from further liability, make the injunction permanent, and make all appropriate orders  
 28 to enforce its judgment.” 28 U.S.C. § 2361 (“In any ... interpleader under section 1335 of this  
 title, a district court may ... enter its order restraining [all claimants] from instituting or  
 prosecuting any proceeding in any State or United States court affecting the property,  
 instrument or obligation involved in the interpleader action until further order of the court.”).

1 The Court finds this case is an appropriate interpleader action under § 1335. In this  
2 case, there is diversity of citizenship between Beck & Lee and the remaining Defendants,  
3 Plaintiff has deposited \$65,000.00 with the Clerk of the Court, and Plaintiff First American has  
4 demonstrated that it claims no interest in the funds. *See* 28 U.S.C. § 1335. The Court  
5 concludes that interpleader is appropriate under § 1335 and that Plaintiff First American is  
6 entitled to discharge from liability. The Court concludes that First American is entitled to an  
7 injunction preventing prosecution against it with respect to the interpled funds pursuant to  
8 28 U.S.C. § 2361.

## CONCLUSION

10 IT IS HEREBY ORDERED that the Motion for Order of Discharge and Injunction  
11 (ECF No. 22) filed by Plaintiff First American Title Insurance Company is GRANTED.  
12 Plaintiff First American Title Insurance Company is fully discharged from liability. The  
13 parties in this case are each enjoined from instituting or prosecuting any proceeding in any  
14 State or United States court against First American with respect to the interpleaded funds until  
15 further order of the court. The Motion to Dismiss First American's Complaint for Statutory  
16 Interpleader (ECF No. 15) filed by Defendant Beck & Lee, P.A. is DENIED.

17 | DATED: August 24, 2011

Wilton Z. Hayes

**WILLIAM Q. HAYES**  
United States District Judge